

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
Western Division

JACQUELINE P. HARRISON,

Plaintiff,

vs.

No.: 2:15-cv-2549-SHL-cgc

**TERESA JONES and
MICHAEL KYLE**

Defendants.

REPORT AND RECOMMENDATION

Before the Court, by way of Administrative Order 2013-05,¹ is the instant case. This matter was initiated by the Plaintiff, Jacqueline P. Harrison, on August 19, 2015 against the Defendants, Teresa Jones and Michael Kyle. (D.E. # 1). On that same date, Plaintiff paid the filing fee and was given a courtesy notice regarding the completion of summons, return of the summons to the Clerk's office for issuance and execution by Plaintiff. To date, the docket does not reflect the issuance of summons or the return of executed summons.

Rule 4(m) of the Federal Rules of Civil Procedure provides that, "[i]f a defendant is not served within 120 days after the complaint is filed, the court -- on motion or on its own after notice to the plaintiff -- must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). Responsibility of summons is with the plaintiff. LR 4.1(a) and (b)(1) control the issuance of summons.

- (a) Preparation of Summonses. A party filing a complaint or any other pleading that requires the issuance of a summons, except for pro se plaintiffs who are proceeding in forma pauperis and who are not prisoners, shall prepare and submit the summons to the Clerk. The Clerk shall issue the summons in accordance with the Federal Rules of Civil Procedure.

¹ The instant case has been referred to the United States Magistrate Judge by Administrative Order pursuant to the Federal Magistrates Act, 28 U.S.C. §§ 631-639. All pretrial matters within the Magistrate Judge's jurisdiction are referred pursuant to 28 U.S.C. § 636(b)(1)(A) for determination, and all other pretrial matters are referred pursuant to 28 U.S.C. § 636(b)(1)(B)-(C) for report and recommendation

(b) Issuance of Summonses in Pro Se Cases.

- (1) If a pro se plaintiff who is not a prisoner has paid the filing fee, the Clerk will provide the plaintiff with the appropriate number of blank summonses when the complaint is filed. In accordance with Fed. R. Civ. P. 4(b), when presented with the properly completed summonses, the Clerk will sign, seal, and issue the process to the plaintiff for service.

All parties are presumed to be on notice of the Federal Rules of Civil Procedure and the Western District of Tennessee Local Rules and are required to abide by them. There is no good cause exception to the service requirement. Therefore, it is recommended that plaintiff's complaint be dismissed without prejudice for failure to obtain timely service.

Signed this 25th day of February, 2016.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.

s/Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE